

Exhibit G

ALEX HORNE, PhD, Volume I, 3-5-09

1

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF OKLAHOMA
 3
 4

5 W. A. DREW EDMONDSON, in his)
 6 capacity as ATTORNEY GENERAL)
 7 OF THE STATE OF OKLAHOMA and)
 8 OKLAHOMA SECRETARY OF THE)
 9 ENVIRONMENT C. MILES TOLBERT,)
 10 in his capacity as the)
 11 TRUSTEE FOR NATURAL RESOURCES)
 12 FOR THE STATE OF OKLAHOMA,)

13 Plaintiff,)

14 vs.)

4:05-CV-00329-TCK-SAJ

15 TYSON FOODS, INC., et al,)

16 Defendants.)

17 -----
 18 VOLUME I OF THE VIDEOTAPED
 19 DEPOSITION OF ALEX HORNE, PhD, produced as a
 20 witness on behalf of the Plaintiff in the above
 21 styled and numbered cause, taken on the 5th day of
 22 March, 2009, in the City of Tulsa, County of Tulsa,
 23 State of Oklahoma, before me, Lisa A. Steinmeyer, a
 24 Certified Shorthand Reporter, duly certified under
 25 and by virtue of the laws of the State of Oklahoma.

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A P P E A R A N C E S

1
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ALSO PRESENT: Dr. Dennis Cooke

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1 Q Now, my understanding that when you did this
2 changing of the data, you actually then selected
3 which data to use to determine what the appropriate
4 ratios would be for the new mean?

5 A Yes.

01:44PM

6 Q So you picked and choosed among the data you
7 had available that you didn't have a concern with
8 when you did your changing of the data you did have
9 concern with in 1974?

10 A Absolutely. That's part of my job. I am here
11 to work out what's representative and what's not
12 representative, and I could have taken everything,
13 which would have excluded your question, but I would
14 have had a higher ratio. So you've got choices
15 here. The question I have is, would it affect the
16 conclusion very much, and you can make those
17 calculations yourself.

01:44PM

18 Q Let me hand you what's been marked as Exhibit
19 No. 2. If you would, take a moment to look at that.
20 Dr. Horne, this is a copy of Figure 7, 8 and 9 of
21 the Cooke and Welch report as it was amended by data
22 that was collected in 2008. The data on here for
23 2008 was collected by CDM in the same fashion that
24 the data was collected in 2005, 2006 and 2007. Now,
25 except for the addition of the 2008 data, do these

01:45PM

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1 Figures 7, 8 and 9 on Exhibit 2 look familiar to
2 you?

3 MR. GRAVES: I'm going to object to --
4 object to the use of these exhibits which are part
5 of a report that the court has already ruled on and
6 excluded from utilizing in the case, and so that's
7 my objection.

01:46PM

8 Q Do you remember the question, Dr. Horne?

9 A It wasn't a question. It was a statement I
10 think.

01:46PM

11 Q I asked you -- well, his was a statement. I
12 asked you whether or not these exhibits, this
13 Exhibit 2, except for the inclusion of the 2008
14 data, was familiar to you as being from the Cooke
15 and Welch report?

01:46PM

16 MR. GRAVES: I'll make the same objection,
17 and is it the State's position that this is rebuttal
18 analysis like what we dealt with in the Johnson
19 deposition?

20 MR. PAGE: This is -- this is materials
21 I've put together for cross examination of this
22 witness.

01:46PM

23 MR. GRAVES: Are these -- were these
24 included in the supplemental 2008 report by Drs.
25 Cooke and Welch?

01:47PM

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1 MR. PAGE: Yes, it was, and --

2 MR. GRAVES: Just for the Record, that's
3 the report that the court already ruled on and
4 excluded.

5 MR. PAGE: And it's the information that 01:47PM
6 has been provided. All the information within this
7 exhibit, including 2008 information, has been
8 provided to the defendants in the case.

9 MR. GRAVES: And, again, the court has
10 excluded that report and these figures from use in 01:47PM
11 the case.

12 Q So, Dr. Horne, we're going to still talk about
13 it even though there's some objections.

14 MR. ELROD: I'm not sure we can. Can we
15 take a time out and go confer with each other? 01:47PM

16 MR. GRAVES: Sure. Let's take a break.

17 VIDEOGRAPHER: We are now off the Record.
18 The time is 1:47 p.m.

19 (Following a short recess at 1:47 p.m.,
20 proceedings continued on the Record at 1:53 p.m.) 01:53PM

21 VIDEOGRAPHER: We are now on the Record.
22 The time is 1:53 p.m.

23 MR. GRAVES: And just to make -- I've made
24 some Record on this regarding the fact that this was
25 an exhibit to a supplemental report that was offered 01:53PM

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1 by the State as a supplement to the Cooke and Welch
2 report and that the court has specifically ruled on
3 that and whether that's something that Dr. Cooke and
4 Welch were allowed to do, and the court has said
5 that they can't supplement their report, and so my
6 objection is also just to the -- to any expectation
7 that it's appropriate that Dr. Horne could try to
8 form opinions or analysis based on a bar chart from
9 a supplemental report and based on data that he's
10 never seen.

01:53PM

01:53PM

11 MR. PAGE: Would you have an objection if
12 it wasn't on a supplemental report; I just pulled
13 out the data that's shown for 2008 and put it in
14 front of him and asked him about 2008 data?

15 MR. GRAVES: Again, it's data that he
16 hasn't seen, and it's data that you all attempted to
17 put forward in a supplemental report that the court
18 said is not allowed, and I just think this is, you
19 know, a backdoor attempt by the State to try to get
20 information into the Record that the court's already
21 said they can't do. I'm not going to tell him not
22 to answer questions if he can answer them, but I
23 want to make the Record, and we're going to move to
24 strike all of it.

01:54PM

01:54PM

25 MR. PAGE: I appreciate that, James. I

01:54PM

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1 guess my point is, is that there's probably a lot of
2 things that Dr. Horne has not seen that's relevant
3 that's been produced on either side, and would you
4 have the same objection if I pulled out something
5 else that's been produced that wasn't a part of
6 Cooke and Welch's report and tried to cross examine
7 Dr. Horne with it?

01:54PM

8 MR. GRAVES: I think it depends on what it
9 is. We've made a Record in previous depositions,
10 including one last week with Dr. Johnson, where
11 there were new analyses by the State's experts to
12 create exhibits, that the analyses was done after --
13 after the expert deadline for the State, and you and
14 I have had some E-mails back and forth over the last
15 couple of days about the appropriateness of that and
16 what ought to be produced and associated with that.
17 The difference here, I think, is not only is it
18 something that was created beyond the deadline, but
19 it's something that the court has specifically
20 reviewed the issue and ruled on it, and that's why
21 we're making the Record we are. We think it's a
22 little bit different and goes even a little bit
23 beyond the objection we had last week at Dr.
24 Johnson's deposition.

01:54PM

01:55PM

01:55PM

25 MR. PAGE: Okay, but I can proceed as far

01:55PM

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1 as you're concerned?

2 MR. GRAVES: Yes.

3 MR. PAGE: And I'll just give you a
4 standing objection.

5 MR. GRAVES: Standing objection, and we're 01:55PM
6 going to move to strike this line of questioning.

7 MR. PAGE: I understand.

8 Q Okay. Dr. Horne, are you familiar with
9 Exhibit 2, except as to the 2008 data?

10 A Yes. 01:55PM

11 Q And now that we've had all the lawyers'
12 discussions, have you had a chance to look at the
13 exhibit, including the 2008 data?

14 A To look at, yes.

15 Q Okay. Can we turn to Page 2, which is Figure 01:56PM
16 8?

17 MR. GRAVES: And, again, just for the
18 Record, I'm not trying to interrupt you, but you
19 termed this as 2008 data. What's actually here is a
20 graphical bar representation of some data, and just 01:56PM
21 so the Record is clear, this is all he's seen of
22 2008 data as well. He hasn't seen any underlying
23 data that might underlie these graphical
24 representations that you are putting in front of
25 him. 01:56PM

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